Supreme Court, U.S.
FILED
OCT 30 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-456

In The
Supreme Court of the United States
October Term, 1987

MAUDE CLEVENGER SIM,

Appellant,

v.

OPAL C. COMISKEY and EDITH R. WRIGHT,
ALAN M. WOOD,
ROBERT M. SPIRE, Attorney General
of Nebraska,

Appellees.

On Appeal from the Supreme Court of Nebraska

APPELLANT'S REPLY BRIEF

J. PATRICK GREEN
2500 California Street
Omaha, Nebraska 68178
(402) 280-2872

Counsel of Record

HARVEY A. NEUMEISTER
KENT J. NEUMEISTER
1201 Second Corso
Nebraska City, Nebraska 68410
(402) 873-5611

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

ARGUMENT 1

CONCLUSION 10

APPENDIX 1a

APPENDIX A.

Direct Examination and Cross Examination of Mr. Harvey A. Neumeister at the Trial on June 14, 1984 ..... 1a

APPENDIX B.

Neb. Rev. Stat. Ch. 30, Art. 28, General Comment, and 30-2801, 30-2830, and 30-2806 (Reissue 1985) 6a

APPENDIX C.

Regan, *Tax, Estate & Financial Planning for the Elderly* §§ 13.04[1]-[2] (1985) 8a

APPENDIX D.

Wellman, "The New Uniform Probate Code," 56 *A.B.A. J.* 636, 640 (1970) 9a

APPENDIX E.

Affidavit of Don G. Renner, dated March 15, 1984 ..... 10a

TABLE OF AUTHORITIES

Page

CASES:

Matter of Forward, 86 A.D.2d 850, 447 N.Y.S.2d 286 (1982) 2

Goodner v. Lindley, 721 P.2d 801 (Okla. 1986) 6

Humphrey v. Cady, 405 U.S. 504 (1972) 8

O'Connor v. Donaldson, 422 U.S. 563 (1975) 3, 5

STATUTES:

Neb. Rev. Stat. § 27-504(2) (Reissue 1985) 9

Neb. Rev. Stat. §§ 30-2619(c) and 30-2636(b) (Reissue 1985) 7

Neb. Rev. Stat. Ch. 30, Art. 26, General Comment (Reissue 1979) 4

Neb. Rev. Stat. Ch. 30, Art. 28, General Comment, and §§ 30-2801, 30-2803, and 30-2806 (Reissue 1985) ... 3, 6

Rule 35 of the Discovery Rules of the Nebraska Supreme Court 6

MISCELLANEOUS:

Committee on Estate and Tax Planning of the American Bar Association, "The Revocable Living Trust as an Estate Planning Tool," 7 *Real Property, Probate and Trust Journal* 223 (1972). 3

Committee on Persons under Disability of the Trusts and Estates Section of the New York State Bar Association, in Callahan, "The Use of a Convertible Trust in Planning for Disability," 53 *New York State Bar Journal* 422 (1981). 4

TABLE OF AUTHORITIES—Continued

Page

Regan, *Tax, Estate & Financial Planning for the Elderly* §§ 13.04[1]-[2] (Matthew Bender, 1985). 4

Special Committee on Legal Problems of the Aging of the Bar Association of New York City, "Six Issues Critical to Older Americans: A Checklist Of Topics That Should Be Discussed By Lawyers With Their Older Clients," 41 *The Record of the Association of the Bar of the City of New York* 786 (1986). 4

Wellman, "The New Uniform Probate Code," 56 *American Bar Association Journal* 636 (1970) 5

ARGUMENT

(1) In the "Response to Jurisdictional Statement," dated October 16, 1987, the Attorney General of Nebraska suggests in his "Questions Presented" that Mrs. Sim was "incompetent" when the petition for guardianship was filed against her on September 3, 1982, and she executed her durable power of attorney and irrevocable trust on October 7, 1982.

Contrary to the appellee, there has never been any finding by any Nebraska state court that Mrs. Sim was incapacitated or incompetent on September 3, 1982, or on October 7, 1982. The Order of the County Court of Otoe County putting Mrs. Sim under guardianship on July 9, 1984, did not and cannot relate back to the filing of the petition for guardianship on September 3, 1982. Contrary to the appellee, the Nebraska Supreme Court treats Mrs. Sim's durable power of attorney and irrevocable trust as being valid and operating with full force and effect.

(2) The Attorney General of Nebraska states:

> "Counsel for Mrs. Sim has raised constitutional objections from the beginning of litigation as to any determination of her competency and has refused from the beginning of litigation to allow the court to view or have an accounting of the alleged trust instrument for which he is trustee. . . . Said trust document has never been presented for judicial review based on a claim that to do so would violate Mrs. Sim's constitutional right to privacy." Response at pp. 3-4.

(3) Contrary to the appellee, his characterization of the testimony of Harvey A. Neumeister is inaccurate. See the actual testimony of Mr. Neumeister which is reprinted in the appendix hereto, p. 1a, infra.

County Judge Robert C. McGowan ruled that Mrs. Sim's trust document would not be received into evidence unless the trustee attached an inventory of her property. This would reveal all of Mrs. Sim's property to her two half-sisters and the public. Mr. Neumeister testified that the trust obligated him to maintain the privacy of Mrs.

Sim's property. See pp. 4a-5a, infra. Mrs. Sim's durable power of attorney and irrevocable trust were drafted by her attorneys, William L. Walker, Harvey A. Neumeister, and Kent J. Neumeister, at Mrs. Sim's direction. See p. 1a, infra.

(4) Contrary to the appellee, there is no rule of evidence which says that Mrs. Sim's trust document must be introduced into evidence in order to prove the trust. Instead, Mrs. Sim's trust was proven by the testimony and evidence at the trial.

Mrs. Sim's trust was proven by her two half-sisters themselves, as follows: On two separate occasions during the trial on March 22, 1984, and June 14, 1984, Mr. Neumeister was called to the witness stand by Richard H. Hoch, the attorney for Ms. Comiskey and Mrs. Wright. (March 22, 1984; 134:5-6. June 14, 1984; 240:22-24) The half-sisters themselves introduced Mr. Neumeister's affidavits of November 3, 1982, November 20, 1982, and March 12, 1984, into evidence. Jurisdictional Statement at pp. 110a, 112a, and 116a. The affidavits were received into evidence by Judge McGowan. (March 22, 1984; E4: 134-35, 160. E5: 139, 160. E7: 146, 160) The half-sisters themselves questioned Mr. Neumeister about the existence, nature, contents, and workings of Mrs. Sim's trust.

All the necessary provisions of Mrs. Sim's trust and its successful operation were proven by the half-sisters themselves. In fact, Mrs. Sim's private trust would be subjected to an invasion of privacy if she were required to introduce her trust document with its inventory into evidence when the trust was already proven by a less restrictive alternative.

(5) Contrary to the appellee, there is nothing in *Matter of Forward*, 86 A.D.2d 850, 447 N.Y.S.2d 286 (1982), which indicates that the proposed conservatee in that case introduced her irrevocable trust document into evidence.

(6) Mrs. Sim's trust is a private, *inter vivos* irrevocable trust. It is not a registered trust. It is not a testamentary trust. There is no obligation on Mrs. Sim to

register her trust. No Nebraska state court has any jurisdiction over Mrs. Sim's trust. See Neb. Rev. Stat. Ch. 30, Art. 28, General Comment, and §§ 30-2801, 30-2803, and 30-2806 (Reissue 1985), which are reprinted in the appendix hereto, pp. 6a-7a, infra.

(7) The standard principles of estate planning protect an elderly person's liberty, property, and privacy against an unjustified guardianship when the person has already established a durable power of attorney and an irrevocable trust to take care of himself and his property for the rest of his life. These principles of estate planning carry out the constitutional principle of *O'Connor v. Donaldson*, 422 U.S. 563 (1975). Jurisdictional Statement at p. 25.

Mrs. Sim's trust follows the principle advocated in 1972 by the Committee on Estate and Tax Planning of the American Bar Association: An elderly person's establishment of a trust "avoided" the "court determination of incapacity and appointment of a guardian or conservator."

> "The revocable living trust offers special lifetime advantages also for elderly persons, [and] persons anticipating incompetence . . . A court custodianship or guardianship involves expense, ofttimes cumbersome court procedures and undesirable and unnecessary publicity. And, of course, often the court appointed fiduciary may not be the person the donor himself would have selected for the purpose. . . . The dilemma of . . . [a] court determination of incapacity and appointment of a guardian or conservator can be avoided by the creation and funding of the revocable living trust while the donor has sufficient mental capacity. . . . The revocable living trust to a large extent enables the donor to keep his financial affairs and his beneficiaries a private matter. . . A fifth advantage is the avoidance of the continuing supervision of the probate court on the ongoing administration of the trust. . . . But, in the more usual situation, the revocable living trust avoids the necessity of court approval of accounts. . . . " A.B.A. Comm. on Estate and Tax Planning, "The Revocable Living Trust as

an Estate Planning Tool," 7 *Real Property, Probate and Trust Journal* 223, 224-26 (1972).

Mrs. Sim's trust follows the principle advocated in 1981 by the Committee on Persons under Disability of the Trusts and Estates Section of the New York State Bar Association:

> "In fact, we strongly suggest that a provision be inserted in the [convertible *inter vivos*] trust to declare the intention of the grantor that upon his disability, he wishes all his property to be transferred to and administered by the successor trustee of the convertible trust [which becomes an irrevocable trust upon disability], so that the appointment of a conservator will not be necessary." Callahan, "The Use of a Convertible Trust in Planning for Disability," 53 *New York State Bar Journal* 422, 426 (1981).

Mrs. Sim's trust follows the principle advocated in 1986 by the Special Committee on Legal Problems of the Aging of the Bar Association of New York City: The Durable Power of Attorney and the *inter vivos* trust are "several of the tools available for the client and lawyer to plan against possible future incapacity" to obviate the necessity of an incompetency or conservatorship proceeding. "Six Issues Critical to Older Americans: A Checklist Of Topics That Should be Discussed By Lawyers With their Older Clients," 41 *The Record of the Association of the Bar of the City of New York* 786, 787 (1986).

Mrs. Sim's trust follows the principle advocated by academic authorities on estate planning for the elderly. See the statement of Professor John J. Regan which is reprinted in the appendix hereto, p. 8a, infra.

(8) Mrs. Sim's durable power of attorney and irrevocable trust fulfill the purpose of the Uniform Probate Code. The purpose is set out in the General Comment to Neb. Rev. Stat. Ch. 30, Art. 26 (Reissue 1979):

> "Article 26 . . . includes provisions for a type of power of attorney that does not terminate on disability of the principal which may be used by adults

> approaching senility or incompetence to avoid the necessity for other kinds of protective regimes. . . . [T]he Article contains many provisions designed to minimize or avoid the necessity of guardianship and protective proceedings . . . The power of attorney which confers authority notwithstanding later incompetence is one example [of such provisions]." Jurisdictional Statement at p. 91a.

Mrs. Sim's trust fulfills the purpose of the Uniform Probate Code as outlined in 1970 by Professor Richard V. Wellman, the chief reporter for the Code after 1966. Professor Wellman's statement is reprinted in the appendix hereto, p. 9a, infra.

(9) The people of the State of Nebraska have enacted the standard principles of estate planning and the constitutional principle of *O'Connor v. Donaldson* into the Nebraska guardianship statute as the only permissible purpose for establishing a system of guardianship. The only permissible purpose of guardianship is to protect an elderly person from causing harm to himself or his property should he become incapacitated without having taken care of the problem of his eventual incapacity in advance through his own private legal arrangements. Thus there is no justification for the Nebraska state courts to put Mrs. Sim under guardianship when she has already fulfilled and complied with the only permissible purpose for guardianship through her own durable power of attorney and irrevocable trust.

When Mrs. Sim is subjected to an overbroad application of the Nebraska guardianship statute in violation of the only permissible purpose for guardianship, her liberty and property and privacy are taken away from her by the State without justification. This deprivation of Mrs. Sim's rights without justification by the Nebraska state courts is what makes the Nebraska guardianship statute unconstitutional as applied to her particular case.

(10) Contrary to the appellee, there is no problem of Mrs. Sim not being protected by an accounting of her trust. There is always an accounting at the termination

of a trust if desired. In Mrs. Sim's case, the property in her trust passes under her will which she made on May 13, 1980. (March 22, 1984; E8: 160. June 14, 1984; 99:22 to 100:17; 243:22-25)

There is no justification to put Mrs. Sim under guardianship just to go on a fishing expedition into her trust when there is no allegation or probable cause to believe that Mrs. Sim's private legal arrangements are not working for the purposes they were established. If the half-sisters want an accounting of Mrs. Sim's trust, they are obligated to pursue a statutory remedy which is a less restrictive alternative than putting Mrs. Sim under guardianship. The half-sisters can try to sue the trustee under Neb. Rev. Stat. § 30-2806 (Reissue 1985) provided they can show they are proper parties and there is probable cause.

(11) The Attorney General of Nebraska says that a guardianship is justified over Mrs. Sim because the County Court limited the powers of the guardian in her case. Contrary to the appellee, limiting the guardian's powers does not provide a justification for subjecting Mrs. Sim to a guardianship in the first instance. Once Mrs. Sim is under guardianship, the guardian's powers can be expanded to total power at any time. And her rights have already been taken away.

(12) The Attorney General of Nebraska says that Mrs. Sim has not been deprived of any liberty or property or privacy. How can the appellee say this?

There is a mandatory constitutional presumption that Mrs. Sim is legally competent. A person cannot be presumed to be legally incapacitated or incompetent just because a petition for guardianship has been filed against him. The State of Nebraska must bear the entire burden of proving incapacity. *Goodner v. Lindley,* 721 P.2d 801 (Okla. 1986). Rule 35 of the Nebraska Discovery Rules for All Civil Cases Promulgated by the Nebraska Supreme Court provides:

> "When the mental or physical condition . . . of a party . . . is in controversy, the court . . . may order

> the party to submit to a physical or mental examination by a physician . . . The order may be made only on motion for good cause shown . . .'' Jurisdictional Statement at pp. 94a-95a.

Rule 35 protects Mrs. Sim's federal constitutional rights of liberty and privacy from an unjustified invasion by the State of Nebraska.

However, Mrs. Sim's liberty and privacy were violated when, pursuant to Neb. Rev. Stat. §§ 30-2619(c) and 30-2636(b) (Reissue 1985), the County Court of Otoe County ordered Mrs. Sim to submit to medical and psychiatric examinations by an order entered September 3, 1982, an order entered August 31, 1983, and an order issued during the trial on March 22, 1984, even though there was no ''good cause shown.'' There was no specific factual basis in the petition for guardianship to justify any proceeding for guardianship, and Mrs. Sim was denied a probable cause hearing to restrain against any unjustified state action. Mrs. Sim was denied due process of law by having the whole burden of proof thrown on her to prove a negative that she is not incompetent.

Mrs. Sim has had her own personal medical records with her own personal doctor exposed to the public and she has had her body examined and her innermost thoughts revealed to a psychiatrist, even though there was never any justification for any proceeding for guardianship in the first place. That privacy can never be restored to Mrs. Sim.

Mrs. Sim has the right to keep her good reputation free from being stigmatized and disgraced by the State of Nebraska. Yet for five years, the orders and opinions of the Nebraska state courts have legally referred to Mrs. Sim as ''a protected person,'' even though there was no justification for any legal proceeding and even though she has been taking care of herself and her property through her own private legal arrangements. Guardianship is a legal status. Every elderly person knows that in guardianship the State tells the whole world that an adult is going to be treated like a child at the end of his life. Is

there any elderly person who does not despise guardianship as a humiliation?

Mrs. Sim was never informed by the psychiatrist of "anything at all" about "her constitutional rights" or "her rights under any of the Nebraska statutes," or about "the fact that any of the statements which she made to [him] could be used against her in these proceedings" to put her under guardianship. Mrs. Sim was not told the truth and the whole truth of what the State was doing to her, while the County Court kept Mrs. Sim's attorneys away from giving her any advice and assistance about her rights. (June 14, 1984; 136:9-16; 138:1-4)

Mrs. Sim will be imprisoned in guardianship. She will be locked up within the walls of legal rules. Her rights are no longer hers to exercise. Guardianship, like commitment, entails "a massive curtailment of liberty." *Humphrey v. Cady*, 405 U.S. 504, 509 (1972).

Mrs. Sim established her durable power of attorney and irrevocable trust to secure the economic benefits which are derived from private contracts, and to free herself from having to pay the unnecessary costs which are required by the State's monopoly scheme of guardianship. Mrs. Sim needs her funds to pay for her personal needs, medical bills, and nursing home. When Mrs. Sim already has her own private legal arrangements, there is no justification for the State's subjecting her to a guardianship which forces her to pay restitution to the opposing attorney, the psychiatrist, and the guardian and conservator for their having conferred an alleged benefit on her against her consent. For example: The opposing attorney has already filed a motion in the district court for attorney's fees. (T:488-89) The psychiatrist has "done over three hundred of these examinations for courts and for the VA . . . " (June 14, 1984; 149:24-25)

Mrs. Sim does not want to see her two half-sisters. Her three attorneys and trustees have complied with her wishes and instructions. But the Nebraska courts say that Mrs. Sim must be put under guardianship so that

"she is not denied access" to her half-sisters. Thus the courts are forcing her to face those whom she does not want to see, her adversaries. Jurisdictional Statement at pp. 8-10 and pp. 31a-32a. This is an overriding of Mrs. Sim's desires and rights, not a justification for guardianship.

Mrs. Sim built her irrevocable trust on her personal and professional relationships with Harvey A. Neumeister, now age 84, who has devoted many of his 52 years of law practice to handling the legal problems of elderly clients and who has represented Mrs. Sim, now age 88, for 35 years; with Alta B. Neumeister who has been one of Mrs. Sim's closest friends for 40 years; and with Kent J. Neumeister who has been a full-time professor of law in Omaha for the last 14 years. (March 22, 1984; 176:3-5. T:190, 240, 294) When Mrs. Sim relies on the bonds of friendship and trust to take care of her in her time of need, she should not be put under the control of strangers.

By being put under guardianship without justification, without probable cause, Mrs. Sim is deprived of the dignity and self-respect that come from an elderly person's knowing that she has the right to establish her own private legal arrangements to carry out her own rational life plan for the rest of her life, and knowing that her right of self-determination will be honored by others. By being put under guardianship when she has already taken care of everything herself, and everything is working as she planned, Mrs. Sim is deprived of the very essence of what her liberty and property and privacy mean to her. That is unconstitutional.[1]

---

[1]While the appellant has not attempted to discuss all the factual errors that underpin the decision of the Nebraska Supreme Court, the following are some examples:

The Nebraska Supreme Court quotes from Mrs. Sim's medical records from her own personal doctor which were written before the petition for guardianship was filed. However, the County Court of Otoe County sustained Mrs. Sim's objection to the half-sisters' introduction of her medical records into evidence. The County Court ruled that under Neb. Rev. Stat. § 27-504(2) (Reissue 1985) Mrs. Sim has a privilege to prevent

(Continued on following page)

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

J. PATRICK GREEN
2500 California Street
Omaha, Nebraska 68178
(402) 280-2872
Counsel for Appellant

(Continued from previous page)

her doctor from disclosing confidential communications. (March 22, 1984; 49:1 to 53:25) The Nebraska Supreme Court improperly quotes from Mrs. Sim's medical records despite their being inadmissible evidence which was rejected from evidence. Jurisdictional Statement at pp. 5a-6a and pp. 93a-94a.

The Nebraska Supreme Court quotes a selected portion from an affidavit by Don G. Renner. Jurisdictional Statement at p. 9a. However, at no time did the half-sisters ever introduce the affidavit into evidence. (March 22, 1984; 150:2 to 160:2) Also, the Nebraska Supreme Court does not quote the last line of the affidavit, which is reprinted in its entirety in the appendix hereto, p. 10a, infra.

The Nebraska Supreme Court states: "The guardian ad litem nonetheless was of the opinion that the interview [with Mrs. Sim on September 21, 1982] showed the need for a guardian or a conservator to care for Sim's affairs." Jurisdictional Statement at pp. 7a-8a. However, the guardian ad litem never testified to any such opinion because the County Court sustained Mrs. Sim's objection to his being a witness. The County Court ruled that Mrs. Sim has a privilege to prevent the guardian ad litem from disclosing confidential communications she made to him when he was acting as her attorney. The Nebraska Supreme Court improperly quotes an offer of proof by the half-sisters. (March 22, 1984; 58:5 to 59:24; 85:1 to 93:13. June 14, 1984; 4:1-23)

APPENDIX

APPENDIX A

Direct Examination and Cross Examination
of Mr. Harvey A. Neumeister
at the Trial on June 14, 1984.

* * *

Mr. Richard H. Hoch: Direct Examination

(p. 248) Q. Stop a minute and tell me what the trust has to say about who takes care of what.

Mr. Harvey A. Neumeister:

A. I'm not going to testify to the trust. I think that's confidential. That's what I've told these—

Q. Do you have a copy of the trust with you today?

A. No, I do not.

Q. Do you have a copy of the durable power of attorney with you today?

A. No, I do not.

Q. What does the durable power of attorney say?

A. I'm not going to tell you. I do not know, that's been written quite a while ago. That was written—not written, but signed then on October 7th as the trust, you know that, 1982. I don't remember all that was in it. I remember we worked a long time on it. I did a lot of work with Maude, went with her to Davenport [Lincoln], went to Lincoln and talked to Mr. Walker a number of times. He suggested things, power or trust, and all the things that was put in there Maude wanted it that way. She understood it real well. That's what she told the notary when it was signed.

Q. Was the notary present when you read all the instruments to her?

A. Yes. When I read them all?

Q. Yes.

(p. 249) A. I can't say we read every line, but the notary was present when we went over all the details, yes, sure he was. He was there I would say. I understand he said something different, he was in there at least two hours, not any forty-five minutes.

(248:1 to 249:5)

• • •

Mr. William L. Walker: Cross Examination

(p. 250) By Mr. Walker:

Q. Mr. Neumeister, the Court has asked us for the trust.

Mr. Harvey A. Neumeister:

A. What?

(p. 251) Q. The Court has asked us for the trust instrument or a copy of the trust instrument.

Judge Robert C. McGowan:

Judge McGowan: I just asked you if you wished to introduce it.

Q. And likewise, the durable power of attorney. Now, Mr. Kent Neumeister and myself have no objection of producing into evidence the trust instrument and the durable power of attorney. It's been testified to, and whatever it is, we have no objection to now. Can you get copies of the trust instrument?

A. I think the trust agreement, and not necessarily the durable power of attorney, I think the trust agreement, like her will, is a confidential instrument—matter between Maude Sim and myself. I have no right to introduce it into evidence in this case. And I don't think it should be. And I thought that's what you people [Mr. Walker and Mr. Kent Neumeister] just said out in the hall, too. So I say I don't think it should—regardless of what comes out in this case, I don't think it [the trust] should be [introduced into evidence].

Q. Mr. Neumeister, as far as the will's concerned, I am not saying anything, because I think that is confidential, but as to the trust and the durable power of attorney, which are the instruments by which you are caring for Maude, you are taking care of her business under the power of attorney and the trust, and (p. 252) pleaded—or we have put and said that we have that as a defense to appointment of any guardian or conservator. Now, we've said that to the Court, and the Court has asked us, are we going to introduce those two instruments.

A. As far as I'm concerned, no. I think that's breaking my—and I would do that if you made a trust agreement. I would not divulge that. And many, many trust agreements that I have drawn are not made public. That's a private, confidential paper. And I have no right to do anything with that paper. I have given enough information—Judge, I have given enough information in my affidavit to know in substance what it [the trust] is about.

Judge McGowan: All right.

A. Now I'll tell you something else about that paper.

Judge McGowan: No, I'm—

Mr. Walker: Would you let me ask him?

Judge McGowan: I know what his answer is. This is going on, and it's about 5:30 in the evening.

A. There's something else about that paper you people are skipping over and makes quite a pressure on me, but I try to do these things right, and I try to do them honestly. I have a right to say these things. I'm (p. 253) not going to do something right now that isn't quite honest, regardless of what you people hold. Judge, you know better, and I don't think it's honest. Now let's go a bit further. In that trust agreement there would be an attachment as to her property. She has never at any time ever allowed me to say what [property] she has. I know what [property] she's got, and it stays right the way it is, much of it, most of it is the way she had it herself. I haven't even touched it.

Q. Let me ask you—

A. Wait just a minute. But that trust agreement has her property, Are you telling me that's not confidential?

I'm not going to divulge that.

Q. Let me ask you this question: Can you detach then what you call as an inventory so that we could deliver here a copy of the trust agreement and the durable power of attorney?

A. Without the inventory?

Q. Without the inventory.

A. I don't know just how that's written. I can't tell you whether a part of it—Mr. Walker, you know what

I mean. I would say this, there might be more reason to allow that [the trust into evidence] without the inventory.

Judge McGowan: I would state to you it will be all or none.

(p. 254) A. Now, you see what they're after!

Judge McGowan: You don't have to offer it, if you don't want to. I just asked you if you were going to do it. You choose not to, then you choose not to.

A. Now you're telling me what to do. What's [That's] what I'm wondering about you [Mr. Walker] and Kent. I am not in a position, and I don't cheat that way. I don't operate that way, and nobody in this room is going to say anything different, either. I know the answer. I'm a little bit provoked about that. I'm not going to do something that I've said to my people that I sure shouldn't do that, I'm going to stick with what I said.

Judge McGowan: All right. That terminates it.

Mr. Walker: I have no more questions.

A. Judge, that's the honest way to do it, too. And I don't think you should even be pushing me for it.

Judge McGowan: All right.

Mr. Walker: You're through, Harvey, on the witness stand.

(250:22 to 254:21)

* * *

APPENDIX B

REVISED STATUTES OF NEBRASKA (Reissue 1985)

Chapter 30. Decedents' Estates.

Article 28. Trust Administration.

Part 1. Trust Administration.

GENERAL COMMENT

(*Section 30-2801* makes trust registration permissive rather than mandatory. . . .)

* * *

30-2801 Duty to register trusts. The trustee of a trust having its principal place of administration in this state may register the trust in the court of this state at the principal place of administration.

* * *

30-2803 Effect of registration. (a) By registering a trust, or accepting the trusteeship of a registered trust, the trustee submits personally to the jurisdiction of the court in any proceeding under section 30-2806 of this code relating to the trust that may be initiated by any interested person while the trust remains registered.

* * *

Part 2. Jurisdiction of Court Concerning Trusts.

30-2806. Court; jurisdiction of trusts. (a) The court has jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the

declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to:

(1) appoint or remove a trustee;

(2) review trustees' fees and to review and settle interim or final accounts;

(3) ascertain beneficiaries, determine any question arising in the administration or distribution of any trust including questions of construction of trust instruments, to instruct trustees, and determine the existence or nonexistence of any immunity, power, privilege, duty or right; and

(4) release registration of a trust.

• • •

APPENDIX C

Professor John J. Regan, *Tax, Estate & Financial Planning for the Elderly* §§ 13.04[1]-[2] (Matthew Bender, 1985)

> "The trust also avoids many of the problems associated with a conservatorship. Under the latter, court authority may be required to purchase or sell assets. Court accountings are required, and an individual conservator is usually required to post a bond. A trust, on the other hand, avoids court supervision and is sufficiently flexible to permit the grantor to confer whatever powers he or she wishes on the trustee, subject to only as much external approval as the grantor desires. . . . [O]ne of the major purposes of the trust is to avoid court appointment of a conservator or guardian." (citing both the 1972 report of the American Bar Association and the 1981 report of the New York State Bar Association).

APPENDIX D

Richard V. Wellman, "The New Uniform Probate Code," 56 *American Bar Association Journal* 636, 640 (1970)

> "The code article dealing with the affairs of minors and disabled persons also includes various devices designed to eliminate many recurring reasons for guardians or conservators. . . . Other provisions permit powers of attorney to be used as reliable sources of authority to manage the affairs of persons who may become incompetent after execution of powers. . . . The final article of the code deals with court procedures for testamentary and *inter vivos* trusts. Proceeding from the assumptions that many existing state laws require unnecessary and expensive qualification and accounting requirements for testamentary trustees and that frequently there is an absence of effective procedures for handling problems relating to *inter vivos* trusts, the article offers a common procedural system for both forms of trust. Under it, no trust is under statutory compulsion to qualify or account in court for the affairs of the trust. . . . The easy availability of optional court procedures will not embarrass the ability of trustees and beneficiaries who face no controversy to handle their business without making any court record indicating the assets, beneficiaries or terms of their arrangement."

APPENDIX E

AFFIDAVIT

EXHIBIT #1D

STATE OF NEBRASKA]
] ss:
COUNTY OF LANCASTER:]

COMES NOW, D. G. Renner, also known as Don G. Renner, and after first being duly sworn on oath, deposes and states that he is a duly appointed notary public for the State of Nebraska; that he resides at 1921 South 53rd Street, Lincoln, Nebraska, and is employed by Stuart Enterprises, Inc. with offices located in the Stuart Building, Lincoln, Nebraska; that the office where he is employed is on the same floor of the Stuart Building and near the office of William L. Walker, Attorney at Law; that on or about October 7, 1982, William L. Walker requested that I come to his office for the purpose of notarizing the signature of a woman on several documents; I went to his office and an elderly lady was present along with attorney Harvey A. Neumeister and, I think, some other people whom I did not meet; that Mr. Neumeister and Mr. Walker both acknowledged to me that the woman signing the instruments was Maude C. Sim, she also acknowledged that she was Maude C. Sim; that Maude C. Sim signed several documents and I notarized her signature; that I did not have any discussion with Mrs. Sim regarding the instruments being executed, did not inquire about them, and cannot testify or affirm whether or not Maude C. Sim knew anything about the documents or was competent to understand them and realize what she was signing; that

my only function at that time was to notarize and affirm her signature.

/s/ D. G. Renner

SUBSCRIBED and sworn to before me this 15th day of March, 1984.

(SEAL)

/s/ Regina Schirmer
Notary Public